



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

July 17, 2008

Mr. Jeffrey L. Bronze, Registered Agent  
Sweeney-Bronze Development LLC  
1000 Brookfield Road  
Suite 200  
Memphis, TN 38119

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7007 2560 0003 3385 7787**

Subject: DIRECTOR'S ORDER NO. WPC08-0140  
ENOCH HILLS SUBDIVISION  
SUMNER COUNTY, TENNESSEE

Dear Mr. Bronze:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Stephanie Fisher at (615) 532-3634.

Sincerely,

Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:SJF

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>SWEENEY-BRONZE DEVELOPMENT</b>	)	
<b>LLC, BRONZE CONSTRUCTION LLC,</b>	)	<b>DIVISION OF WATER</b>
<b>AND ANCHOR PIPE COMPANY INC.</b>	)	<b>POLLUTION CONTROL</b>
	)	
<b>RESPONDENTS</b>	)	
	)	<b>CASE NUMBER WPC08-0140</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

Sweeney-Bronze Development, LLC, (hereinafter the "Respondent Sweeney- Bronze") is an active limited liability company licensed to conduct business in the state of Tennessee and is the owner of a residential development known as Enoch Hills Subdivision (hereinafter the "site") located off Hartsville Pike (Highway 25E), Gallatin, Tennessee. Service of process may be made on the Respondent through Jeffrey L. Bronze, Registered Agent, at 1000 Brookfield Road, Suite 200, Memphis, Tennessee, 38119.



### III.

Bronze Construction, LLC, (hereinafter the “Respondent Bronze”) is an active limited liability company licensed to conduct business in the state of Tennessee and is the developer of the site. Service of process may be made on the Respondent through Jeffrey L. Bronze, Registered Agent, at 1000 Brookfield Road, Suite 200, Memphis, Tennessee, 38119.

### IV.

Anchor Pipe Company, Inc., (hereinafter “Respondent Anchor Pipe”) is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Bronze to conduct construction activities at the site. Service of process may be made on Respondent Anchor Pipe through James D. Thigpen, Registered Agent, at 4450 Sears Road, Pegram, Tennessee 37143.

## **JURISDICTION**

### V.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”).

Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

## **VI.**

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

## **VII.**

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a completed Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## **VIII.**

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.



## **IX.**

Old Hickory Reservoir and its unnamed tributary, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, Old Hickory Reservoir and its unnamed tributary are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Additionally, Old Hickory Reservoir is classified for Industrial Water Supply, and Domestic Water Supply.

## **FACTS**

### **X.**

On April 24, 2007, a NOI, SWPPP, and appropriate fee were submitted to the Nashville Environmental Field Office (NEFO) by Respondent Bronze, requesting coverage under the TNCGP for construction activities at the site.

### **XI.**

On May 8, 2007, the division notified Respondent Bronze that the NOI submitted to receive coverage under the TNCGP was incomplete, and that a notice of coverage (NOC) would not be issued until a completed NOI was submitted to the division.

### **XII.**

On June 20, 2007, an application was submitted to the NEFO by Respondent Bronze, requesting written ARAP authorization for Stream Restoration and Habitat Enhancement to the

unnamed tributary of Old Hickory Reservoir. The division issued a general permit, ARAP NR0704.211, authorizing these activities on July 2, 2007.

### **XIII.**

On June 20, 2007, an application was submitted to the NEFO by Respondent Bronze, requesting written ARAP authorization for Sediment Removal for Stream Remediation to an unnamed tributary of Old Hickory Reservoir. The division issued a general permit, ARAP NR0704.212, authorizing these activities on July 2, 2007.

### **XIV.**

On August 1, 2007, a revised NOI was submitted to the NEFO by Respondent Bronze, requesting coverage under the TNCGP for construction activities at the site.

### **XV.**

On August 14, 2007, the division notified Respondent Bronze that the revised NOI submitted to receive coverage under the TNCGP was incomplete, and that NOC would not be granted until a completed NOI was submitted to the division.

### **XVI.**

On September 7, 2007, a revised NOI was submitted to the NEFO by Respondent Bronze, requesting coverage under the TNCGP for construction activities at the site, section 1 phase 1 and section 2 phase 1. The division issued coverage under the TNCGP, and assigned it tracking number TNR145501.

## **XVII.**

On December 5, 2007, a NOI, SWPPP, and appropriate fee were submitted to the NEFO by Respondent Bronze, requesting coverage under the TNCGP for construction activities at the site section 2 phase 2 and section 1 phase 1. The division issued coverage under the TNCGP on December 28, 2007, and assigned section 2 phase 2 tracking number TNR146056, and section 1 phase 2 tracking number TNR146055.

## **XVIII.**

On April 17, 2008, division personnel conducted a compliance inspection at the site and noted that Erosion Prevention and Sediment Control (EPSC) measures were not in accordance with the SWPPP, had not been properly installed, and had not been properly maintained. Excavated material had been stockpiled at the headwaters of the unnamed tributary to Old Hickory Reservoir, allowing a release of sediment downstream that resulted in a condition of pollution to the unnamed tributary. Sediment was also observed accumulating in a detention basin at another subdivision downstream from the site. The NOC was not posted on-site as required by the TNCGP. Weekly EPSC inspections had not been performed or documented as required by the TNCGP.

## **XIX.**

On April 24, 2008, the division issued a Notice of Violation (NOV) to Respondent Anchor Pipe and Respondent Bronze for violations noted at the site during the April 17, 2007, compliance inspection. The NOV requested that the Respondents install and maintain effective EPSC measures.



## **XX.**

On May 9, 2008, the division received a letter from Paul Frazier of Bronze Construction stating that the EPSC measures had been addressed, and the NOC and SWPPP were available on-site.

## **XXI.**

On July 2, 2008, division personnel conducted a compliance inspection at the site. EPSC measures had been installed and were adequate. Sediment deposits remained in the unnamed tributary. The NOC was not posted and the SWPPP was not current. Records indicated that weekly inspections had only been performed one time during the month of June.

## **XXII.**

During the course of investigation the division incurred DAMAGES in the amount of FOUR HUNDRED THREE DOLLARS AND TWENTY EIGHT CENTS (\$403.28).

## **VIOLATIONS**

## **XXIII.**

By failing to comply with the terms and conditions of the TNCGP and an existing ARAP, and by altering waters of the state without authorization under an ARAP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

#### XXIV.

By causing a condition of pollution to the unnamed tributary to Old Hickory Reservoir, the Respondents have violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER**

### **XXV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondents.

1. The Respondents shall, within 7 days of receipt of this ORDER and ASSESSMENT, establish effective EPSC measures such that sediment does not leave the site. These measures shall be chosen and installed in accordance with the Tennessee Erosion and Sediment Control Handbook.
2. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the NEFO at 711 R.S. Gass Blvd., Nashville, Tennessee 37243, and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. Within 30 days of receipt of this ORDER and ASSESSMENT the Respondents shall submit a corrective action plan (CAP), designed by a professional engineer or other qualified professional, to restore the unnamed tributary to Old Hickory Reservoir,



specifically addressing the removal of sediment and the stabilization of the affected areas. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the NEFO at the address listed in Item 2, above.

5. The Respondents shall, within 6 months of approval from the division, complete the actions outlined in the approved CAP and no additional permitting will be required for these approved activities. The Respondents shall submit notification of completion to the Water Pollution Control Manager in the NEFO at the address shown in Item 2 within 7 days of completion.
6. The Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT pay DAMAGES to the division in the amount of FOUR HUNDRED THREE DOLLARS AND TWENTY EIGHT CENTS (\$403.28).
7. The Respondents shall pay a CIVIL PENALTY of NINETEEN THOUSAND FIVE HUNDRED DOLLARS (\$19,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
  - b. If the Respondents fail to comply with Part XXV, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.

- c. If the Respondents fail to comply with Part XXV, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XXV, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDREDDOLLARS (\$3,500.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXV, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXV, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00), payable within 30 days of default.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

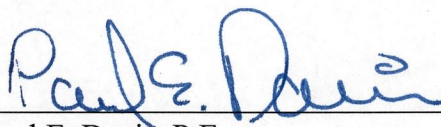
The director may, for good cause shown, extend the compliance dates contained within this ORDER and ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all



preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER and ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 17 day of July 2008.

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondents to secure review (appeal) of this ORDER and ASSESSMENT. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondents received this ORDER and ASSESSMENT or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural



Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondents may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.